97-2038

Supreme Court, U.S.
FILED
MAR 11 1998
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DOCKET NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1997

CHARLES RAYMOND CROWELL,

Petitioner,

VS

UNITED STATES OF AMERICA,

Respondent,

Petition for Writ of Mandamus to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF MANDAMUS

IN RE: CHARLES RAYMOND CROWELL

Submitted by:

Charles R. Crowell - In Properia Persona
Register Number 23829-077
Federal Medical Center
3150 Horton Road - FTO Unit
Fort Worth, Texas 76119-5996
(no phone)

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ISSUES PRESENTED FOR REVIEW

1. Should the Appeals Court be allowed to endorse a departure of a lower court when conditions of Title 28 USCA §2253 (c) (2) have been met and such has been admitted by lower court in denying a Title 28 USCA §2255 motion.
2. Should the Appeals Court mis-lead an appellant to believe a continuing action is available, considering that Petitioner's Petition has been filed with the court demonstrating more issues being involved than reviewed by the lower court.
3. Should the lower court be put in a position of reviewing itself as is currently required under Title 28 USCA §2253.
4. Should the Appeals Court or District Court rule against findings already declared and recognized by the Appeals Court in the same Circuit.
5. Should the District Court address only issues it selects as opposed to issues submitted in a Title 28 USCA §2255 motion, without having acquiesced to the unaddressed issues.

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PREAMBLE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

Now comes, Charles R. Crowell, Petitioner, requesting a Writ of Mandamus, as provided by Title 28 USCA §1361 & 1651(a), to be issued as Extra-ordinary Writ as part of a Writ of Certiorari, as provided for under Rule 10(a) of Federal Rules of Civil Procedures along with rules 20.4(a), 21, 22, 30 and 33.2. In addition the Petitioner requests a ruling on the accuracy of procedures being used by the United States Court of Appeals as will be described on the following pages. The Petitioner will show such as justified as follows:

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

OPINIONS

Petitioner respectfully prays that a writ of mandamus be issued to review the judgment below.

The opinion of the United States Court of Appeals appears at Appendix "H & J" to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix "A & C" to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 1, 1997. A timely petition for rehearing was denied by the United States Court of Appeals on October 10, 1997, and a copy of the order denying rehearing appears at Appendix "J". An extension of time to file the petition for a writ of certiorari was granted to and including March 15, 1998, on March 3, 1998, in application NO. A-642. Additional extension was granted to and including June 15, 1998, on April 15, 1998, for correction of petition.

The jurisdiction of this Court is involked under Title 28 U.S.C. §1254(1).

HISTORY & STATUTES INVOLVED

9/8/96 - Petitioner filed the original motion before the District Court pursuant to Title 28 USCA §2255, showing seven (7) issues to be considered; [five (5) of which were direct constitutional rights violations].

11/25/96 - Respondent responded to the original motion addressing only three (3) of the seven (7) issues [two (2) of which were direct constitutional violations].

1/7/97 - Petitioner moved to the lower court for "Stipulation of Acquiescence" on the unaddressed issues; the issues concerned the lack of jurisdiction; invalid indictment; and other rights violation [some of which had already been affirmed by the Court of Appeals in the case (see U.S. vs. Crowell, 60 F3rd 199, 5th Circuit, 1995)].

1/10/97 - District Court filed order dismissing §28-2255 motion. The denial pointed out denial concerning constitutional rights violations.

3/12/97 - Petitioner filed notice of appeal after the District Court refused to correct under FRCP 60(b).

5/22/97 - Court of Appeals issued an order for a Certificate of Appealibility from the District Court.

6/11/97 - District Court denied Certificate of Appealibility referring to its order of January 10, 1997 of which it admitted two (2) constitutional rights violations were involved. Constitutional Rights violation is all that is required under Title 28 USCA §2253(c) (2) for a Certificate of Appealibility to be issued. The Petitioner substantially showed the lower court five (5) violations of constitutional rights being of the Fifth, Sixth and Eighth Amendments, of which some rights were affirmed in direct appeal by the

Court of Appeals - Fifth Circuit (See U.S. vs. Crowell, 60 F3rd, 5th Circuit, 1995). Another reason for denial of Certificate of Appealibility was that

> **"Crowell had procedurally defaulted on some of his asserted grounds for relief because he did not raise them on his direct appeal".**

This reason is contrary to the findings of facts and law. [See Fay vs. Noia, 372 US 409, 83 S. Ct. 822; Mallory vs. U.S. 354 US 449, 77 S. Ct. 1356, 1 LEd 2nd 1479 (1957); Tucker vs. U.S. C.A. D.C.1970, 422 F2nd 615, 138 U.S. App D. C. 345 on remand 328 F. Supp. 1312 (re: Sixth Amendment violations)].

7/19-23/97 - Petitioner appealed the lower court action of June 11, 1997 after denial of FRCP 60(b) was filed to the lower court.

9/11/97 - Appeals Court filed order denying Certificate of Appealibility; not considering other four (4) issues involved (some of which are directly in the line of constitutional rights and were referenced to in the petition on file with the Appeals Court.

9/22/97 - A motion for rehearing or correction under FRCP 60(b) was filed with the Appeals Court. This motion was subsequently denied.

STATEMENT OF CASES & ERRORS OF THE COURT(S)

The District Court on denying the Title 28 USCA §2255 motion on January 10, 1997, in its denial the District Court admitted it was denying <u>two</u> violations of constitutional rights. This ruling took place <u>without</u> a <u>hearing</u> and <u>contrary to findings of facts and law.</u>

In addition to denying the two (2) admitted constitutional rights the District Court did not address four (4) other issues therefore, acquiescing, as defined in Yeach vs. Stockman, CA Colo. 483 F2nd 820, 834, to the facts and the issues of the issues made in the 28-2255 motion. These issues involved rights of the Petitioner including additional constitutional rights of double jeopardy (See U.S. vs. U.S. Coin & Currency, 401 US 715, 28 LEd2nd 434, 91 S. Ct. 1041, 393 F2nd 498, certiorari granted affirmed). Other issues effecting rights of Petitioner are: (1) lack of jurisdiction and (2) invalid indictment.

The District Court then denied to issue Certificate of Appealibility stating that there was no conflict over constitutional rights under Title 28 USCA §2253 (c) (2). The court admitted overruling constitutional rights violations in the order of January 10, 1997. This ruling was made without a hearing and contrary to the findings of facts and law including violations of rights ruled previously by the Court of Appeals [See U.S. vs Crowell, 60 F3rd 199, 5th Cir. (1995)]. This action was appealled to the Fifth Circuit Court of Appeals and asked the court to review along with facts and findings of law cited in the petition already filed with the Circuit Court in this matter.

The Circuit Court agreed with the District Court in its findings. Therefore, the Circuit Court ruled without a hearing and contrary to the findings and the facts of the law. Also, contrary to findings, the finding of the Circuit Court had already issued in this matter during direct appeal. The Circuit Court has met the actions required for this court to issue a writ of certioari under Rule 10(a)

> **"or has sanctioned such a departure by a lower court, as to call for an excercise of this court's supervising powers."**

REASONS FOR GRANTING THE PETITION

District Court has failed to address all issues presented in the Title 28 U.S.C.A. §2255 petition of which these were constitutional issues. In addition, District Court refused to correct said error after Defendant pointed out the errors. District Court subsequently refused to issue Certificate of Appealability as a result of omitting addressing unaddressed issues as well as the constitutional addressed by the Court. Unaddressed issues included constitutional issues.

United States Court of Appeals endorsed this extraordinary and abusive position by refusing to supersede the District Court ruling by issuing Certificate of Appealability in the appeal process.

Petitioner's position is further relayed and explained on pages 6 & 7 of this document: **"Summary and Argument".**

SUMMARY & ARGUMENT

Both Courts by not issuing Certificate of Appealability have denied the Petitioner **"due process under the law"** by

(1) ruling contrary to facts and findings of the law that there was no violation(s) of Constitutional Rights while in the district Court Order denying Certificate of Appealibility admitted to two issues that involved Constitutional Rights.

(2) the courts have acquiesced to issues that were not addressed by the lower court; submitted in the §28-2255 motion submitted by the Petitioner involving constitutional rights.

(3) the Appeals Court **"has sanctioned such a departure by the lower court, as to call for the exercisal of this Court's supervising powers as per Rule 10(a)."**

(4) the Appeals Court also has disregarded / ignored its prior ruling of misconduct and violations of rights by the original justice of the lower court (See U.S. vs. Crowell, 60 F3rd 199, 5th Circuit, 1995) which further shows departure by the lower court.

CONCLUSION

The Petitioner believes that this court should issue a Writ of Mandamus to the U.S. Court of Appeals - Fifth Circuit to hear, or review the total Appeals Petition already filed with the Appeals Court concerning all seven (7) issues as originally submitted to the District Court under §28-2255 and rule on the issues as shown to Appeals Court as to the findings and facts of the law in this matter, regardless of the lack of a Certificate of Appealibility.

Petitioner prays that this Court agrees and submits this petition and request on this 9th day of June, ~~1988~~/998.

Respectfully submitted,

Original Signed
/s/ Charles R. Crowell

Charles R. Crowell - In Properia Persona
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APPENDIX A

COURT ORDER FILED BY DISTRICT COURT JUDGE
Dated January 10, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§
	§
VS.	§4:92-CR-139-E
	§4:96-CV-625-E
CHARLES CROWELL (1)	§

ORDER

Defendant Charles R. Crowell has moved, pursuant to 28 U.S.C. §2255, to vacate, set aside or correct his sentence. The Court concludes that the motion must be denied.

I. BACKGROUND

Crowell was charged in a three count indictment with offenses related to his defrauding investors and misusing their money. He pleaded guilty to one count by the district court, finding that the potential sentencing range would not reflect the severity of his conduct, did not accept the plea agreement. Crowell was then charged in a superseding indictment with one count of interstate transportation of money obtained by fraud, twenty counts of mail fraud, and two counts of engaging in monetary transactions in property derived from mail fraud. He pleaded guilty to two of the counts. Again the court rejected

the plea agreement, and Crowell proceeded to trial. A jury convicted Crowell on all counts.

On appeal, Crowell challenged the district court's involvement in the plea negotiations and its rejection of the plea agreements. He also objected to the length of the sentence the court imposed. Crowell did not contest the sufficiency of the evidence, the court's evidentiary rulings or anything else related to the conduct of the trial. The appeals court affirmed Crowell's conviction but remanded the case for resentencing by a different judge. United States vs. Crowell, 60 F.3d 199 (5th Cir. 1995). This Court then sentenced Crowell to a ten year term on the first count, which covered pre-Sentencing Guidelines conduct, and a seventy-eight month term on the remaining Guidelines counts, the terms to run concurrently. Crowell did not appeal the new sentence.

II. ANALYSIS

Crowell's grounds for habeas relief can be summarized as follows: (1) the evidence did not support his convictions on any of the twenty-three counts;[1] (2) his suspension from practice before the Internal Revenue Service and the penalties assessed by that agency violated the Double Jeopardy Clause and the Eighth Amendment; and (3) his trial was unfair due to ongoing errors committed by the original trial court.

A defendant is entitled to relief under §2255 only for violations of constitutional rights and a narrow range of other

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[1] With respect to the mail fraud counts, Crowell contends there was insufficient evidence to support jurisdiction. Despite this somewhat different phrasing, the Court finds that this ground for relief amounts to a claim of insufficient evidence. The exact characterization of this claim is insignificant in any event since, as discussed below, Crowell's failure to raise it on appeal bars its consideration on collateral review.

errors "that could not have been raised on direct appeal and would, if condoned, result in a complete miscarriage of justice." United States v. Acklen, 47 F.3d 739, 741 (5th Cir. 1995) A motion under §2255 may not be used as a substitute for an appeal. United States v. Frady, 456 U.S. 152, 102 S.Ct. 1584, 1593 (1982); United States v. Shaid, 937 F.2d 228, 231 (5th Cir. 1991), cert. Denied, 502 U.S. 1076 (1992). Where a movant raises constitutional or jurisdictional issues for the first time in a motion for collateral relief, he must show both cause for his failure to do so earlier and actual prejudice resulting from the alleged errors. Acklen, 47 F.3d at 741-42; Shaid, 937 F.2d at 232. An exception to the cause and prejudice requirement exists only in the extraordinary case where a constitutional violation has probably resulted in the conviction of one who is actually innocent. Id.

Crowell's first and third grounds for relief could have been but were not raised in his direct appeal. He has presented no reason for his default other than to suggest that the trial court judge was so intimidating that Crowell's attorney was unable or unwilling to press these points. Even if true with regard to the trial itself, this would not explain or justify the failure to assert these grounds on appeal. Moreover, counsel's mere failure to recognize the basis for a claim or to raise the claim despite recognizing it does not constitute cause that would excuse procedural default. See Murray v. Carrier, 477 U.S. 478, 486, 106 S.Ct. 2639, 2644 (1986) (discussing cause in context of default in state court procedures).[2] Inasmuch as

---

[2] Although Murray involved the effect of state procedural default on federal habeas review and therefore entailed issues of comity not present in the circumstances here, the Supreme Court has stated that federal prisoners are entitled to no greater protection from procedural default when they seek collateral relief than are state prisoners. See United States v. Frady, 456 U.S. 152, 166, 102 S.Ct. 1584, 1593 (1982).

Crowell has shown no cause for the failure to raise his first and third grounds earlier, and has not contended he is actually innocent,[3] these claims cannot be the basis for habeas relief. See Clark v. Texas, 788 F.2d 309,311 (5th Cir. 1986) (district court barred from considering merits of state prisoner's habeas claim regarding insufficiency of evidence where no cause shown for failure to raise issue on direct appeal); Kristiansand v. United States, 319 F.2d 416, 417 (5th Cir. 1963) (insufficiency of evidence not a basis for relief under §2255); Enzor v. United States, 296 F.2d 62, 63 (5th Cir. 1961), cert. Denied, 369 U.S. 854 (1962) (challenge to sufficiency of evidence must be raised on direct appeal and cannot be basis for relief under §2255).

Crowell's second ground must be rejected for different reasons. In this ground he claims that the Double Jeopardy and Excessive Fines Clauses of the Fifth and Eighth Amendments were violated because subsequent to his conviction, the IRS barred him from practice before it and also assessed penalties of over $1 million against him.

The double jeopardy claim is meritless on its face. Crowell apparently believes that the IRS's administrative action amounted to punishment that barred his criminal convictions for the same conduct. However, there can be no double jeopardy until a prior jeopardy has attached. See Serfass v. United States, 420 U.S. 377, 388, 95 S.Ct. 1055, 1062-63 (1075) (no double jeopardy until a prior jeopardy has attached by defendant being put to trial before trier of fact);

---

[3] While Crowell argues that the government failed to prove his guilt of the offenses charged, he does not go so far as to claim he was innocent of those offenses. Of course his earlier guilty pleas would make such a claim ludicrous.

United States v. Gonzalez, 76 F.3d 1339, 1344 (5th Cir, 1996) (jeopardy had not attached where there was no final administrative action or other adjudication on forfeiture prior to criminal conviction). Since by Crowell's own account the IRS had not taken any action against him at the time of his convictions, the agency's action could not have constituted a former jeopardy barring his convictions in this case.

Crowell's Eighth Amendment claim is simply not appropriate in this forum. He contends, in essence, that the IRS's tax under 26 U.S.C. §4975 on prohibited transactions relating to qualified pension plans was so excessive in his case as to amount to a violation of the Eighth Amendment. The tax in question was not a part of the conviction or sentence in this case, though, and its validity therefore cannot be challenged by means of a motion under §2255.

Finding that Crowell has not demonstrated any basis for habeas relief, the court ORDERS that his motion to vacate, set aside or correct his sentence and subsidiary motion for summary judgment are DENIED. Because Crowell's motion for habeas relief can be resolved without reference to the specific evidence presented in the case, the court also DENIES his motion for an order requiring production of exhibits from the trial.

Signed this 10th day of January, 1997.

s/Eldon B. Mahon
ELDON B. MAHON
United States District Judge

APPENDIX B

MOVANT'S MOTION TO SET ASIDE/VACATE AN ORDER

Filed January 22, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	)(
Respondent	)(
VS.	)(CIVIL CASE NO.4:96-CV-625-E
	)(CRIMINAL CASE NO. 4:92-CR-139-E
CHARLES	)(JUDGE ELDON B. MAHON
CROWELL (1)	)(
Movant	)(

MOVANT'S MOTION TO SET ASIDE/VACATE AN ORDER

TO THE HONORABLE JUDGE ELDON B. MAHON, SENIOR JUDGE:

NOW COMES, Charles R. Crowell, the Movant in this matter before the Court to make the motion that the Court set aside/vacate the order of the Court filed on January 10, 1997. The Movant requests this action pursuant to Federal Civil Judial Procedures and Rules as to Rule 60(b), for reasons hereinafter stated:

Appendix B

HISTORY OF THIS MATTER

The following sequence of events have taken place in this matter:

September 6, 1996 -	The Movant filed the original motion before this pursuant to Article 28 USC §2255.
September 9, 1996 -	The court subsequently ordered an answer from the Respondent under Rule 5.
November 5, 1996 -	Respondent filed "Government's Motion for Extension of time to File Response and Brief.
November 6, 1996 -	Court Order to extend response time of Government to November 22, 1996.
November 15, 1996 -	Movant filed "Motion to the Court for an Order for Production". (Dismissed in Order in question)
November 25, 1996 -	Respondent filed a reply to the original motion in this matter. (Filing being late and past the deadline set by the Court.
December 3, 1996 -	Movant filed "Motion to the Court for a Summary Judgment and Objection to Admission to Response." (The Court has not addressed this matter as of date)
January 10, 1997 -	Court filed Order dismissing motion. (This order is the subject of this filing.)

Appendix B

ISSUES

The Respondent replied claiming that the original motion contained five (5) issues reducing them to three (3). The Movant filed in the original motion seven (7) issues for consideration with numerous points in support of evidence of issues. As a result, the Respondent reply resulted in the following errors and acquiescence, as grouped also failing to comply with Rule 5.

DISPUTED CITIES OF RESPONDENT IN REPLY

The following disputed cites are as referred to and explained, some of which are due to the fact that Respondent did not address issues of the position of the Movant.

1. U.S. vs Phillips - does not address "established grounds" as stated.
2. Davis vs U.S. - not applicable. Change of Law not issue. Constitutional issue required.
3. U.S. vs Frady - Supreme Court reversed and remanded District Court position (allowing 2255) issue; not attached at Appeals "cause actual and prejudice."
4. U.S. vs Shaid - Movant's claim is constitutional and jurisdictional.
5. U.S. vs Seyfort - Movant's issue is that of Constitutional and jurisdictional.
6. U.S. vs Payne - double Jeopardy was on later acts of Internal Revenue Service and could not be addressed at trial due to the fact that they had not occurred.

7. Rainwater vs U.S. - Constitutional and jurisdictional issues were raised at trial.
8. U.S. vs Sanchez-Escareno - cite not found as stated.
9. U.S. vs Moore - Does not apply. Double Jeopardy occurred after the trial; therefore could not be raised before or at trial.
10. U.S. vs Milhim - Not applicable. No second trial on superceding indictment.
11. Fed R. Crim P - See note on item 7 above.
12. U.S. vs Green - not applicable. Stated civil penalty as excessive at 105% per annum on monies involved (plus return of funds; violates the Eighth Amendment).
13. Czere vs Butler - not applicable. Pleas not accepted re: Sixth Amendment violation.

ISSUES ACQUIESCED BY RESPONDENT DUE TO NOT ADDRESS MOVANT'S POSITION

The following positions have been acquiesced to the Movant's due to the failing to address the position of the Movant:

1. Respondent did not address the Movant's position on the Eighth Amendment instead addressed a superlative position made up by the Respondent.
2. Respondent did not address the Fifth Amendment violations of the Movant. Civil assessments or acts after the trial, therefore such acts being violation of the fifth Amendment. (See Austin vs U.S. 113 S. Ct. 2801, 53 Crl 2274 (1993), 125 L Ed2nd 488 and U.S. vs Halper 490 U.S. 435 (1989), 109 S. Ct. 1892, 104 L Ed2nd 487 (1989), also U.S. vs LaFrance, La. 1931, 51 S. Ct. 278, 282 U.S. 568, 75 L Ed 551.

3. Respondent did not address the statement that the document (a check) in Count 1 was delevered primarily to Mr. Cassler (confirmed intestimony of two witnesses). This stement removes the Essential Elements of Violation of Title 18 U.S. C. §2314 by Movant.
4. In regard to Counts 2 - 21, Respondent did not rebute the position of Movant that statements were required by Internal Revenue Service Code and Regulations (See Title 26 U.S.C. §4971-4980B inclusive) and that for failure to render statements to participants was subject to both civil and Criminal punishment apply. (See Title 18 U.S.C. §§6041, 6888, 6690, and 6693.)
5. Respondent did not address the fact that excessive are the penalties under Title 26 U.S.C. §§4975a and 4975b.
6. Respondent did not dispute the statement "U.S. Attorneys continually made false statements".
7. Respondent did not dispute that statement "Internal Revenue Service - Criminal Investigating Division Investigator made misleading statement(s) to the Grand Jury".
8. Respondent did not dispute the "the Justice violated four (4) counts of the Law in the process of the original sentencing", and the "Court of Appeals agreed with this".
9. Respondent did not dispute the statement "Due to the errors of the Justice, especially in violation of Rule 11(e)(1) and ignoring caselaw, there is no way the Defendant could ever receive a fair trial, therefore, violating Sixth Amendment of the constitution".

Appendix B

ISSUES ACQUIESCED BY RESPONDENT DUE TO NOT ADDRESSING THE ISSUE

The following are issues that Respondent has acquiesced to by not addressing the issue. (See Yench vs Stockman, C.A. Colo., 483 F2nd 820, 834)

1. Respondent did not respond to the position and statement of the lack of jurisdiction as stated by Movant in this matter on Counts 2 through 21, under Title 18 U.S.C. §1341. (See U.S. vs Beall, D.C. Cal. 1954, 126 F Supp 363; U.S. vs Tarmopel 561 F2nd 466 and U.S. vs Cina, C. A. Wis 1983, 699 F2nd 853, centiorari denied, 104 S. Ct. 481).
2. Respondent did not respond to the question, statement or position of the Movant of jurisdiction of Counts 22 and 23. Such juisdiction was relied upon by Respondent in the indictment. In addition, the fact that testimony at trial removed the Essential Elements as a violation of Title 18 U.S.C. §1957.
3. Respondent did not respond to the state of validity of the indictment. (See Page B-2 of Original Motion) and that the entire indictment was invalid and convictions therefore, should be vacated and indictment dismissed with prejudice. The statement was made with the understanding that based on Caselaw, as previously stated, that Counts 2 through 21 were not in the jurisdiction of the Court, Counts 22 and 23 relied on the jurisdiction of Counts 2 through 21 was in the jurisdiction of the Court. With twenty-two (22) of twenty-three (23) counts not being in the jurisdiction of the Court, the indictment should therefore, be dismissed and the convictions should therefore be dismissed with prejudice. (See U.S. vs Beall, D. C. Cal. 1954, 126 F Supp 363, U.S.

vs Tarmopel 561 F2nd 466 and U.S. vs Cina, C. A. Wis. 1983, 699 F2nd 853, certiorari denied, 104 S. Ct. 481).

4. Respondent did not address the conflict in law of Title 18 U.S.C. §1341 and Title 26 U.S.C. §§4971-4980B and Title 18 U.S.C. §§6041, 6688, 6690 and 6693. Nor did Respondent address the Trial Testimony, statements or facts of the trial. Both being a violation of the Sixth Amendment. (See pages E-1 through E-4 of Original Motion.) Respondent did not address the state or position of Movant "... if the Defendant was able to testify in the matter, without being in jeopardy. The Defendant would have been in jeopardy per Supreme Court ruling in U. S. vs Meszzanto, No. 93-1340, 1/18/95" and the statement "Due to errors of the Justice, especially in violating Rule 11(e)(1) and ignoring caselaw, there is no way the Defendant could ever receive a fair trial/ therefore also violating Sixth Amendment of the Constitution". Supports said violation of Sixth Amendment.

OTHER ACQUIESCENCE BY RESPONDENT

Respondent has acquiesced to the following a fact by not addressing, rebuting or offering opposing caselaw.

1. Trial Testimony quoted on Page A-1, B-1, D-1, and E-1 of the Original Motion.
2. Caselaw cites supportin positions on:

Page Number -	Supporting
B-1	Lack of jurisdiction Title 18 U.S.C. §1341
B-1	Conflict in Law supporting Sixth and Fifth Amendment violations.
C-1	Eighth Amendment violations

Appendix B

C-1 and 2 Fifth Amendment violations

ERRORS OF THE COURT

It is apparent that the Court has adopted the attitude and position of the Respondent (i.e., addressing only issues which the Respondent addressed, reducing seven (7) issues with supporting evidence to three (3) issues). Therefore, the Court has committed the same errors as listed for Respondent as follows:

a. the errors shown under "Issues".
b. Cites references number 3 and 4 of Respondent for the same issue.
c. Issue Acquiesced by Respondent Due to Not addressing the issue...
d. Issue Acquiesced by Respondent...
e. Other Acquiences

Items b - e are violations of Rule 5 by Respondent; therefore, by adopting, the Court is denying Movant "due process under the law." (See Margales vs Pennuyer, C. A. Wis., 660 F2nd 291, cert, denied, 102 S. Ct. 1256, 455 US 909, 71 L. Ed.2nd 447; U.S. vs LaVallee, 319 F2nd 308, (2nd Cir. 1963); Trinity Episcopal Corp. D. C. N. Y. 387 F supp 1044, 1084.

In addition, the Court's following cites of the Court's Order is questionable:

1. Kristiansod vs U.S., 319 F2nd 416, 417 (5th Cir. 1963)
2. Sefras vs U.S., 420 U.S. 377, 388, 95 S. Ct. 1055, 1062 - 63 (1975)
3. U.S. vs Gonzales 76 F3rd 1339, 1344 (5th Cir. 1996)

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SUMMARY AND CONCLUSION

Therefore, the Court having adopted the errors of the Respondent, it has denied Movant "due process under the law". In addition, its questionable cites reflect the position of the Respondent. Also acquiesces make contradicting statements. The Court in the action of setting aside/vacating its Order filed January 10, 1997, would have the opportunity to review further and "allow court to correct its errors". (See Oliver vs Monsanto Co., D. C. Tex. 1972, 56 F.R.D. 370, affirmed, 487 F2nd 514.) with such correction Movant believes and prays that the Court will agree with Movant's Original Conclusion to wit, and will make the following rulings and orders:

1. Convictions of all counts of the indictment to be vacated and dismissed with prejudice, and
2. Judgment of the Tax Court be abated and rendered unconstitutional, and
3. Issue and Order for the immediate release of Defendant, and
4. Issue and Order to Internal Revenue Service to re-instate the Defendants right to Practice before Internal Revenue Service (re-instate his Enrolled Agent status) upon request of the Defendant, This right to be re-instated unconditionally, and
5. Grant Defendant all other relief to which he may be entitled in this proceeding.

RESPECTFULLY SUBMITTED this 21st day of January, 1997.

s/ Charles R. Crowell
Charles R. Crowell
Pro Se

CERTIFICATE OF SERVICE

I, Charles R. Crowell, do hereby certify that a copy of the attached Motion in its entirety was mailed via First Class Mail, Postage prepaid to the U. S. Attorney, 801 Cherry Street, Suite 1700, Fort Worth, Texas 76102 on the 21st day of January, 1997.

s/ Charles R. Crowell
Charles R. Crowell

CERTIFICATE OF CONFERENCE

I, Charles R. Crowell do hereby certify that I was unable to contact Respondent due to the fact that I am incarcerated on this 21st day of January, 1997.

s/ Charles R. Crowell
Charles R. Crowell

APPENDIX C

COURT ORDER FILED BY DISTRICT COURT JUDGE DENYING TO SET ASIDE / VACATE ORDER

Filed / Dated February 28, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§
	§
VS.	§4:92-CR-139-E
	§4:96-CV-625-E
CHARLES CROWELL (1)	§

ORDER

Defendant Charles R. Crowell has moved to set aside or vacate the Court's order of January 10, 1997, which denied his motion for relief under 28 U.S.C. §2255. The gist of Crowell's argument is that the government failed to dispute several of his positions in the §2255 motion and therefore the Court should have found he was entitled to relief on those grounds.

Crowell's new motion does nothing to undermine the conclusions in the January 10 order. Accordingly, finding no reason to reconsider or modify those conclusions, the court ORDERS that the motion to vacate or set aside is DENIED.

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Signed this 28th day of February, 1997.

s/Eldon B. Mahon
ELDON B. MAHON
United States District Judge

APPENDIX D

APPEALS COURT ORDER TO DISTRICT COURT FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY (COA)

Filed / Dated May 27, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10252
USDC Nos. 4:96-CV-625-E
4:92-CR-139-E

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus

CHARLES CROWELL

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas

ORDER:

Charles R. Crowell's notice of appeal has been construed as a request for a certificate of appealability (COA). The district court that rendered the judgment denying Crowell's 28 U.S.C. §2255 motion must initially determine that a COA should issue and specify on which claims or state the reasons why a COA should not issue. See Muniz v.

APPENDIX D

Johnson, 114 F.3d 43, (5th Cir. May 20, 1997, No. 96-50508), 1997 WL 265120 at **1-2.

The case is REMANDED to the district court for consideration of Crowell's request for a COA.

s/Jacques L. Wiener, Jr.
JACQUES L. WIENER, JR.
United States Circuit Judge

APPENDIX G

APPELLANT'S MOTION TO THE COURT (COURT OF APPEALS) TO OVERRULE DISTRICT COURT ON CERTIFICATE OF APPEALABILITY (COA)

Filed / Dated July 25, 1997

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA	)(File NO.97-10252
Appellee,	)(DC NO. CIVIL 4:96-CV-625-E
versus	)(DC NO. CRIMINAL 4:92-CR-
	)(139-E(01)
CHARLES RAYMOND CROWELL	)(
Appellant,	)(

APPELLANT'S MOTION TO THE COURT TO OVERRULE DISTRICT COURT ON CERTIFICATE OF APPEALABILITY RULING

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

NOW COMES, Charles R. Crowell, Appellant in this matter requesting the Court to overrule District Court in denial of "Certificate of Appealability " as provided under Title 28 USCA §2253 (c)(3) and Federal Rules of Appeal Procedures, rule 22(b).

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BE IT KNOWN TO ALL MEN that references to documents, case law, law, etc., whether stated, restated, quoted, or requoted that such references are included herewith and are a part hereof.

ADDITIONAL HISTORY OF CASE NO. 4:96-CV-625-E

The following is a continuation of history of Case no. 4:96-CV-625-E occurring subsequent to the filing of Appellant's Original Brief before this Court:

03/12/97 -	Appellant filed Notice of Appeal and paid fee.
05/27/97 -	United States Court of appeals - Fifth Circuit requested a Certificate of Appealability (COA) from district court.
05/28/97 -	Appellant filed a motion for "Release on Bond Pending Appeal".
06/11/97 -	Appellant filed a Request for Hearing and/or Ruling.
06/11/97 -	Court Filed order denying COA.
06/16/97 -	Court filed order denying motion filed May 28, 1997.
06/20/97 -	Appellant filed motion under FCRP Rule 60(b) to set aside/vacate order of June 11, 1997 (COA).
07/09/97 -	Appellant filed "Motion requesting a Hearing and/or Ruling on motions filed June 20, and June 24, 1997.
06/24/97 -	Appellant filed motion under Rule 60(b) requesting Court to set aside/vacate order of June 16, 1997.

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HISTORY OF CASE NO. 97-10252

This is the history of this case as of date:

03/12/97 -	Appellant filed notice of appeal and paid fee.
03/31/97 -	Appellant mailed two (2) copies of Appellant's Original Brief to Appellee.
04/04/97 -	Appellant filed the Original Brief with the Court.
05/12/97 -	U.S. Court of Appeals - Fifth Circuit requests a Certificate of Appealability (COA) from district Court.
IN TRANSIT -	Appellant filed "Appellant's Notice of Non-Compliance and Motion/Request of Court's Stipulation of Acquiescence."

FACTS

On September 6, 1996, Appellant filed Original Motion pursuant to Title 28 USCA §2255 having seven (7) issues before the court distributed into five (5) areas due to the overlapping nature of the issues.

On November 25, 1996, Appellee filed response stating that there was five (5) issues which Appellee elected to treat as three (3) issues.

On December 3, 1996 and January 7, 1997, Appellant filed "Motion to the Court for a Summary Judgment and Objection to Response" and "Movant's Response to Respondant's Reply and Motion for stipulation of Acquisence", respectively. Both motions pointed out the error

of the fact that there were seven (7) issues, reorganized and listed for the benefit of the court.

On January 10, 1997, the court issued order dismissing §2255 motion.

On January 22, 1997, Appellee files motion under Rule 60(b) listing out error(s) of Appellee and the court on number of issues, reorganized and listed.

On February 28, 1997, Court denies motion of January 22, 1997 stating that new information has not changed its mind or thinking.

On May 22, 1997, this Court requested Certificate of Appealability of the district Court which was denied June11, 1997 (attached Exhibit A) stating basically a constitutional right [per title 28 USCA §2253©(2)] was not involved. However, in the first paragraph of the Order, the Court stated it had previously rejected Appellant's argument **"that he was subject to double jeopardy and an excessive fine."**, both of which are constitutional issues. The Court and the Appellee have taken a position contrary and different from the Appellant's in the Original Motion and continue to argue from their "elected" position and not the position of the Appellant. This has been pointed out to the Court in documentation/motions filed: December 3, 1996, January 7, 1997, and January 22, 1997. The Court refuses to acknowledge same as it was pointed out in the documents/motions as "Errors of the Court". It has been Appellant's position, in documentation since that time, that the issues were not properly addressed; therefore, acquiesced to as

defined in Yeach vs stackman (See page 35 of Appellant's Original Brief.)

On June 20, 1997, Appellant filed motion under FRCP Rule 60(b) (attached Exhibit B), again setting out the "Errors of the Court" which continues to be errors that occurred originally and which the court refuses to acknowledge and adding the error of denying the Appellant **"due process under the law".**

After the expiration of the ten plus (10+) days with no response, Appellant filed on July 9, 1997 (Exhibit C) a motion requesting a hearing and/or ruling of the matter along with another matter. It has now been over thirty plus (30+) days since the motion filed under Rule 60(b) and more than ten plus (10+) days since the request for a hearing and/or fuling and the court has not responded.

SUMMARY

It appears, to the Appellant, that we have a very proud court. It refused to change position or admit error(s) even to the point of denying **"due process under the law"**, and to the point that that it refuses any possibility of being wrong, even when such errors are listed 1, 2, 3,... etc. and shown where in the Original Motion the issue existed. It is not, therefore, surprising that the same Court refused to issue COA for whatever reason. For them to issue such a document would have the Court admitting that it is possibly wrong. Based on Appellant's experience this <u>will</u> <u>not</u> happen. The Appellant has continuously extended the courtesy to the Court under Rule 60(b) to **"allow the Court to correct its error(s)"** and to continuously point out the number of issues involved, sever

(7), but the Court's erroneous position on issues as being three (3) addressed, only to be ignored. The Court has made all of its decisions without the benefit of a hearing, even when a hearing was requested.

CONCLUSION

Therefore, the Appellant requests that the Court of Appeals rule as provided under Title 28 USCA §2253(c)(3) and FRAP Rule 22(b) on the COA. (See Muniz vs Johnson, CA5, 114 F3rd 43). The issues consist of seven(6). That is the same in all documentation filed by the Appellant including Appellant's Original Brief (See pp 4-17).

Appellant prays that the Court agrees and will take any and all actions necessary to proceed with this action and matter to the benefit and to protect the rights of the Appellant.

RESPECTFULLY SUBMITTED this 22nd day of July, 1997.

s/Charles R. Crowell
CHARLES R. CROWELL,
Pro Se
Federal Medical Center -FTO
Reg. No. 23829-077
3150 Horton Road
Fort Worth, Texas 76119-5996

Appendix G

CERTIFICATE OF SERVICE

I, Charles R. Crowell, do hereby certify that a copy of this motion, in its entirety was mailed via first class mail, postage prepaid to Delonia A. Watson, Ass't. U.S. Attorney, Chief of the Appellate Section, 1100 Commerce Street, Third Floor, Dallas, Texas 75242-1699, on this 22nd day of July, 1997.

s/ Charles R. Crowell
Charles R. Crowell

CERTIFICATE OF CONFERENCE

I, Charles R. Crowell, do hereby certify that a conference between myself and the U.S. Attorney in regard to this matter has not taken place, due to my incarceration as of this 22nd day of July, 1997.

s/ Charles R. Crowell
Charles R. Crowell

APPENDIX G
EXHIBIT A
APPENDIX E

COURT ORDER (DISTRICT COURT) DENYING CERTIFICATE OF APPEALABILITY (COA)
Filed/Dated June 11, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	§
	§
VS.	§4:92-CR-139-E
	§4:96-CV-625-E
CHARLES CROWELL (1)	§

ORDER

On January 10, 1997, the Court issued an order denying petitioner Charles Crowell's 28 U.S.C. §2255 motion. In that order, the Court found that Crowell had procedurally defaulted on some of his asserted grounds for relief because he did not raise them on his direct appeal. The Court also rejected Crowell's argument that he was subject to double jeopardy and an excessive fine.

After the Court denied Crowell's motion for reconsideration, Crowell filed a timely notice of appeal. The Court, however, did not decide whether a certificate of appealability ("COA") should issue. Consequently, the Fifth

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Circuit has remanded the case so that the Court can make this determination.

A COA should issue only for those issues where the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. §2253(c)(2). As this standard is a codification of the Barefoot v. Estelle, 463 U.S. 880, 103 S. Ct. 3383 (1983) standard, to make a substantial showing "'an applicant must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues (in a different manner); or that the questions are adequate to deserve encouragement to proceed further.'" Drinkard vs. Johnson, 97 F.3d 751, 755 (5th Cir. 1996) (quoting Barefoot v. Estelle, 463 U.S. 880, 103 S. CT. 3383 (1983)), cert. denied, __U.S.__, 117 S.Ct. 1114 (1997) (emphasis ommitted).

Crowell has not made the requisite showing on any of his claims. He has not shown cause and prejudice for his failure to raise the claims that could have been raised on direct appeal, and he did not contend that he was actually innocent of the crimes. See United States vs. Acklen, 47 F.3d 739, 741-42 (5th Cir. 1995). Therefore, the Court was barred from hearing these claims.

Crowell also did not make a substantial showing of the denial of a constitutional right concerning his double jeopardy claim or excessive fine claim. Crowell acknowledged that the IRS had not taken any action against him at the time of his convictions, so the IRS's later action of imposing a tax on him and preventing him from practicing before it could not provide the basis for vacating his earlier criminal conviction on double jeopardy grounds. See United States v. Gonzalez, 76 F.3d

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1339, 1344 (5th Cir. 1996). As to Crowell's claim that he was subject to an excessive fine, the tax imposed by the IRS was not a part of the underlying criminal case and cannot be properly considered in a §2255 motion.

Accordingly, the Court ORDERS that Crowell's request for a COA is DENIED.

Signed this 11th day of June, 1997.

s/Eldon B. Mahon
ELDON B. MAHON
United States District Judge

APPENDIX G
EXHIBIT B
APPENDIX F

MOVANT'S MOTION TO SET ASIDE/VACATE AN ORDER OF DENIAL OF CERTIFICATE OF APPEALABILITY (COA)
Filed June 20, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	)(
Respondent	)(
VS.	)(CASE NO.4:96-CV-625-E
	)(OTHER NOS.
CHARLES	)(4:92-CR-139-E(01)
CROWELL (1)	)(
Movant	)(JUDGE ELDON B. MAHON

MOVANT'S MOTION TO SET ASIDE/VACATE AN ORDEROF DENIAL OF CERTIFICATE OF APPEALABILITY

TO THE HONORABLE JUDGE ELDON B. MAHON, SENIOR JUDGE:

NOW COMES, Charles R. Crowell, the Movant in this matter before the Court to make the motion that the Court set aside/vacate the order of the Court filed on June 11, 1997.

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BE KNOWN that references to documents, case law, law, etc., whether herein stated, restated, quoted or requoted, that such references are included herewith and included as a part hereof.

THE MOVANT REQUESTS this action pursuant to Federal Civil Judicial Procedures and Rules as to Rule 60(b), for reasons hereinafter stated:

HISTORY OF THIS MATTER

The following sequence of events have taken place in this matter:

September 8, 1996 -	The Movant filed the original motion before this pursuant to Article 28 USC §2255.
September 9, 1996 -	The court subsequently ordered an answer from the Respondent under Rule 5.
November 5, 1996 -	Respondent filed "Government's Motion for Extension of time to File Response and Brief.
November 6, 1996 -	Court Order to extend response time of Government to November 22, 1996.
November 15, 1996 -	Movant filed "Motion to the Court for an Order for Production". (Dismissed in Order dated January 10, 1997 and subsequent Order dated February 28, 1997.)

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November 25, 1996 - Respondent filed a reply to the original motion in this matter. (Filing being late and past the deadline set by the Court.

December 3, 1996 - Movant filed "Motion to the Court for a Summary Judgment and Objection to Admission to Response." (The Court has not addressed this matter as of date)

January 7, 1997 - Movant filed "Movant's Response to Respondent's Reply and Motion of Stipulation of Acquiesce." (This motion has not been addressed by the Court as of date.)

January 10, 1997 - Court filed Order dismissing motion.

January 22, 1997 - Movant filed "Movant's Motion to Set Aside/Vacate on Order (1/10/97) under FRCP Rule 60(b).

February 28, 1997 - court denied Motion filed 1/22/97 by Movant.

March 12, 1997 - Movant file notice of Appeal and paid fee.

??/??/?? - United States Court of Appeals - Fifth Circuit request in some document a Certificate of Appealability (COA).

June 11, 1997 - Court denied COA.

FACTS

In the Courts denial, it still holds to old position that issues are not procedurally available to the fact that some of the asserted grounds for relief were not raised during direct appeals. Movant finds that this position is incorrect, to wit:

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> **"... the failure to appeal directly a constitution claim of error will not bar habeas relief under section 2255, absent of deliberate choice not to appeal made by concious election".** [See U.S. vs Copua CA5 (Tex) 1981, 656 F2nd 1033]. **"... the failure to appeal directly a constitutional claim of error, will not bar haveas relief under Section 2255 absent of deliberate choice not to appeal made by a concious election".** [See Buckelow vs. U.S., 525 F2nd 515, 519 (5th Circuit 1978); Also see, Thor vs. U.S. 574 F2nd 215, 219 (5th Circuit); Sosa vs. U.S. 550 F2nd 244, 247-48 (5th Cir. 1977).] **"... save those errors which may considered harmless, trial errors of constitutional magnitude are conigable on collateral attack".** (See Fay vs. Noia, 372 U.S. 409, 83 S. Ct. 822) (Emphasis added).

Consequently, Movant's constitutional challenge to admissability of his statements is open in this proceeding [See Mallory vs. U.S. 357 U.S. 449, 77 S. Ct. 1356, 1 L Ed2nd 1479 (1975)].

> **"Bare fact that a claim was not made on direct appeal did not establish waiver of constitutional right barring review in post conviction proceeding."** (See Tucker vs. U.S. CA D. C. 1970, 427 F2nd 615, 138 U.S. App D. C. 345, on remand 328 F. Supp 1312) (Emphasis added)

Movant's position a direct appeal was represented by attorney for the Movant; NOT Movant, pro se. Who can say what is in the mind of another person? Movant was not aware

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of possibility of violations held in Title 28 USCA §2255 motion until long after attorney filed petition with U. S. Court of Appeals and findings were resolved. It was this subsequent information that caused Movant's proceeding with investigation of possible violations that led to filing of motion under §2255.

In filing denial of June 11, 1997, the Court stated it rejected Movant's argument of his subject to double jeopardy and an excessive fine without stating reason. This is appealable by law. (See Rule 3(a) USAR and Title 18 USCA §§ 3771 & 3772 and Title 28 USCA §§2072 - 2075. This alone qualifies for COA.

Title 18 USCA §2253 (c) (2) does not apply. Movant has shown several violations of Constitutional Rights. [See Original Motion, page C-1, Items 2 & 3; Page 4, Item 2; (5th Amendment, double jeopardy); penalties under Title 26 USCA §§4975a and 4975b, page C-1 of original motion (8th Amendment); cites pp C-1 & 2; violations of original Justice, some affirmed by U. S. Court of Appeals - Fifth Circuit, misconduct of prosecutors and IRS-CID investigator (Sixth Amendment); immunity from prosecution - conflict in laws by testimony of Ms. Stewart IRS Agent; Page B-1, original motion (5th Amendment) Lack of Jurisdiction as attested to by three (3) different Circuit Courts on cases of almost identical circumstances, original motion page B-1; motion under rue 60(b) page 4, items 4 & 5, Fifth amendment violation.

U.S. vs Acklen does not apply in this case. See statements on the forgoing page 4 of this motion, last paragraph.

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Movant agrees and has always stated that double jeopardy occured after convictions. Double jeopardy occurs only after the occurrence of an act as a second, third, etc. event. Occurence took place as follows for double jeopardy to apply.

1. On January 14, 1994, Internal Revenue Service suspended Appelant's right to practice before Internal Revenue Service (as an Enrolled Agent). This being the first act of violating Fifth Amendment Rights (double jeopardy), due to result of the criminal trial.

2. On May 23, 1994, Internal Revenue Service filed an assessment recorded by the Tax Court Docket No. 26339-92 (Dallas, Texas - Judgment in the amount of $1,251,580.00 as penalties under Title 26 USCA §§4975a and 4975b on the same acts and activity that created the indictment and criminal trial. (Second violation of Double Jeopardy - Amendment 5). See cases cited in original motion page C-1 last paragraph and page c_2, page 4, item 2.

In addition, neither Respondent or the Court responded to the position of the Movant on (1) lack of jurisdiction (counts 2-23); (2) invalid indictment (counts 1-23); (3) conflict in the law; (4) lack of essential elements on all counts; Sixth

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Amendment violation. Items 1, 2, 3, and 4 were acquiesenced[1] to by both the respondent and the court. Movant supported his position with the following case laws to wit as quoted:

(1) **(Non criminal act, "gives to attack with habeas corpus if mailings are not closely related". [See** Strauss vs U. S., CA 7 (Ill.) 1975, 516 F2nd 980; Also see Le Fraver vs U. S., N. D. Ill. 1990, 748 F. Supp. 579 **"If an indictment shows that mails were used only after completion of a fraudent scheme, federal courts <u>have</u> <u>no</u> <u>jurisdiction</u> under this section.** (18-1341) See U. S. vs Beall, D. C. Col 1954, 126 F Supp 363. **"...mailings themselves are not sufficiently closely related to support mail fraud prosecution, even through... funds received through some of them is object of scheme to defraud".** See U. S. vs Tarmopel 561 F2nd 466). **"Proof that mailing, alleged to have occured subsequent to period of mail fraud offense, occured earlier, even if accepted as variance <u>would</u> <u>not</u> <u>support</u> <u>jurisdiction</u>, where under such proof, time of mailing would have occurred prior to the period of offenses". Also, "in view of crucial jurisdictional significance of time of mailing to mail fraud prosecution, Court**

---

[1] See Yeach vs Stockman, CA Colo, 483 F2nd 820, 834
Acquiesence- "Failure to respond to issues in statement and made as a matter of record, 'neglect to enforce his rights by neglect ... a length of time ... would imply that he intended to waive or abordence his right'". "Acquiescence is where a person knows or ought to know that he is entitled his right or to impeach a transaction and neglects to do so for such a length of time a would imply that he intended to waive or abandon his right."

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> **of Appeals could not in any event permit variance between date of mailing and alleged time period of offense".** See U. S. vs Cina, CA Wis 1983, 699 F2nd 853 cert. denied, 104 S. Ct. 481. (emphasis added)

These cites were listed and referred to in the original motion on Page B-1 and on Motion under Rule 60(b) on page 5, item 2.

(2) Invalidity of counts 2-23 due to lack of jurisdiction, see item 1 above and count 1 due to mishandling of the indictment on jurisdiction or other counts.

(3) Conflict in the law on counts 2 through 21; also, invalidating counts 22 & 23 due to their reliance on counts 2 through 21. (See U. S. vs U. S. Coin & Currency, 401 U. S. 715, 28 L Ed2nd 434, 91 S. Ct. 1041, 393 F2nd 499 and certiorari was granted, affirmed to wit: **"...we have held that the conduct being penalized is <u>constitually immune</u> <u>from</u> <u>punishment</u>."** [Also, see, Linkbetter vs Walker, 381 U. D. 618, 815 s. Ct. 1731, 14 L Ed2nd 601 (1965, 323 F2nd 11) and the testimony of IRS Agent, Steward, in Trial Transcript, Vol II - Pages 92 & 93). Conflicting laws being Title 26 USCA §§4971 - 4980B, inclusive and punishments provided under Title 18 USCA §6041, 6688, 6690 and 6693.

(4) Based on trial testimony of Mr. Cassler and Ms. Stine Vol. I, pps. 47-112 and Government Exhibit

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No. 59 the evidence lack the essential elements of Title 18 USCA §2314.

(5) Sixth Amendment violations

(a) Original Justice's violation of Rule 11(e)(1). See U. S. vs Crowell, 60 F3rd 199.

(b) Original Justice's violation of Rule 11(e) (6) as pending in ruling of U. S. vs Mezzanto, No. 93-1340 (1/18/95), 130 L Ed2nd 697, 115 S. Ct., 998 F2nd 1452.

The Court failed or refuses to take any action on any issues acquiesed[2] to by both the Court and the Respondent to the Movant's position.

Any one of the above violations petitioned my Movant in Original Motion and undersucceeding motion under Rule 60(b) filed January 22, 1997 are grounds for COA and appealability under the law as previously stated.

The Court has also state that Movant failed to claim his innocence to the crimes. Movant asks the Court "How do claim innocence to crimes that do not exist under the law with supporting case law? The alleged crimes being only in the minds of representatives of the Respondent." The fact that Movant was complying with the law under Title 26 USCA as previously stated. The only violations of the law is that of the filing of charges in violation of Fifth Amendment (See U. S. vs U. S. Coin & Currency, 401 U. S. 715, 28 L Ed2nd 434,91 S. Ct. 1041, 393 F2nd 499 and centiorari was granted affirmed, quoted on page 7, item 3 of this document.) and the

[2] See foutnote 1, Page 36A of this document

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misconduct of the Original Justice in this matter; previously acknowledged by U. S. Court of Appeals - Fifth Circuit in prior hearings and filing (See U. S. vs Crowell, 60 F3rd 199).

ERRORS OF THE COURT

The Court has erred as follows:

1. The Court acknowledged that two (2) Constitutional Rights were rejected by the Court for an undisclosed reason in it's denial of COA Order dated filed June 11, 1997. The question of the violation of these Constitution Rights are adequate to meet the requirements of Title 28 USCA §2253 (c)(2). [See Barefoot vs Estelle, 463 U. S. 880, 103 S. Ct. 3383 (1983) and Drinkard vs Johnson, 97 F3rd 751, 755 (5th Circuit, 1996) cert. denied __ U. S. __, 177 S. Ct. 1114(1997)] emphasis omitted. The requirements accordingly meet those necessary to issue a COA.
2. Failure to issue COA as justified in item 1 above. The failure to do so in denying Movant **"due process under the law".** [See Margales vs Pennoyer, CA Wis., 660 F2nd 291, cert. denied, 102 S. Ct. 1256,455 U. S. 909, 71 L Ed2nd 447; U. S. Vs LaVallee,319 F2nd 208, (2nd Circuit 1963); Trinity Episcopal Corp. D.C. N. Y. 387 F Supp 1044, 1084.]
3. Failure to issue COA will result in the second time the Court has denied Movant of **"due process under the law".** The first being failure to have

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Respondent comply under FRCP Rule 5, complete; with the Court also failing to address all (7) seven issues. Also, the Court has failed to act on the Motion filed January 7, 1997 by Movant directly.

4. In addition, the Court should issue COA due to dispute of procedually defaults (implied by the Court) as to not being in default (by Movant) (See pps 3 & 4 under FACTS, this document). This qualifies for COA and is a matter in dispute and meets requirements Title 28 USCA §2253(c)(2). Failure to issue Coa is again denying the Movant **"due process under the law"**. To settle such disputes is the reason for Courts of Appeal. U. S. vs Gonzalez does not apply due to the fact the "double jeopardy-5th Amendment violation", civil action has proceeded further in this case.
5. Movant has shown reason for issues brought during direct appeals, both by statement and case law (See page 4, ¶ 1 of this document. Lack of jurisdiction (3 circuits), Page B-1 Original Motion, Motion on 60(b), Page 4, Item 2; immunity (5th Amendment violation) (See U. S. vs U. s. Coin & Currency (60(b) motion, page 4 & 5. Eighth amendment violation (Motion 6(b), page 4 & 5. The violations also meet the requirements of Title 28 USCA §2253(c)(2) and per requirements of U. S. vs Acklen, 47 F3rd 739, 741-41 (5th Circuit 1995).

All errors of the Court justify and meets statue requirements for the issue of COA. Failure to issue COA for determination of the Appeals Court to render judgment on the

Appendix G
Exhibit B
Appendix F

disputed matters will constitute the Court denying Movant **"due process under the law".**

SUMMARY

There are more than enough violations of constitution rights to justify the issue of COA:

1. Three (3) violations of Fifth Amendment (one being immunity from punishment.[3]
2. Violation of 6th Amendment, affirmed in part by U. S. Court of Appeals[4]
3. Violation of 8th Amendment
4. Lack of jurisdiction[4]
5. Invalid indictment[4] - violating all rights of Movant

Movant would like to point out that Title 28 USCA §2255 provides for correction of judgements when violation of constitutional rights, lack of jurisdiction, etc.. The section does not require that such rights, in part or in total, be violated under the case in which the Title 28 USCA §2255 is filed as implied on Page 2 ¶ 3 of Order dated June 11, 1997. Therefore, the court has jurisdiction to correct subsequent violations of Constitutional Rights.

CONCLUSION

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3) See footnote 1 page 36a of this document
4) See footnote 1, Page 36a of this document

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Therefore, there is no reason logical or under the law for the Court to deny COA to the Appeals Court on behalf of the Movant. This especially true since the Respondent and the Court has taken positions to answer their selected three (3) issues out of seven (7) rendered and at a different position of the Movant. Therefore, many of their cites and reasons do not apply. The other four (4) issues have been acquised[4] to by both. Those issues acquised[4] to include more than one constitution rights violations of which is in dispute. Movant pray that the Court agrees and will take this opportunity **"to correct it's errors"** (See page 8 of 60(b) motion) and allow the Movant his rights under **"due process under the law"** which as to date has been denied and issue COA.

RESPECTFULLY SUBMITTED this 18th day of June, 1997.

s/Charles R. Crowell
Charles R. Crowell, Pro Se
FMC #23829-077
3150 Horton Road - FTO
Fort Worth, Texas 76119-5996

CERTIFICATE OF SERVICE

I, Charles R. Crowell, do hereby certify that a copy of this motion in it's entirety was mailed to U. S. Attorney, 801

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4) See footnote 1, Page 36a of this document

Appendix G
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Appendix F

cherry Street, Suite 1700, fort Worth, Texas 76102 via First Class Mail, postage prepaid on this 18th June, 1997.

s/Charles R. Crowell
Charles R. Crowell

CERTIFICATE OF CONFERENCE

I, Charles R. Crowell, do hereby certify that a conference has not been held with the U. S. Attorney on this matter due to my incarceration on the 18th June, 1997.

s/Charles R. Crowell
Charles R. Crowell

APPENDIX G
EXHIBIT C

MOVANT'S REQUEST FOR HEARING AND/OR RULING ON MOTIONS(S)
Filed July 9, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	)(	
Respondent	)(	
VS.	)(	Case No.4:96-CV-625-E
	)(	Other Nos.
CHARLES CROWELL	)(	DC: 4:92-CR-139-E(01)
Movant	)(	USCA 97-100252
	)(	

MOVANT'S REQUEST FOR HEARING AND/OR RULING ON MOTION(S)

TO THE HONORABLE ELDON B. MAHON, SENIOR JUDGE:

NOW COME, Charles R. Crowell, the Movant in this matter requesting a hearing and/or ruling on motions presently before the court.

BE IT KNOW TO ALL MEN that references to documents, case law, law, etc. whether herein stated, restated,

quoted, or requoted that such references are included herewith and are a part hereof. Such motions as referred in the request were filed in pursuance to Rule 60(b) of the federal Civil Judical Procedures and Rules.

HISTORY OF THE FIRST MATTER IN MOTION(S) CERTIFICATE OF APPEALIBILITY

The sequence of events in this matter are as follows:

05/27/97 - U. S. court of Appeals - fifth Circuit ordered a Certificate of Appealibility (COA) from district Court.

06/11/97 - District Court filed Order denying COA.

06/20/97 - Movant filed motion under Rule 60(b) to set aside/vacate

Order of Denial.

HISTORY OF SECOND MATTER IN MOTION(S) RELEASE ON BOND PENDING APPEAL

The sequence of events in this matter are as follows:

05/28/97 - Movant filed motion for release on bond pending appeal.

06/16/97 - Court issued Order denying motion of May 28, 1997.

06/24/97 - Movant filed motion under Rule 60(b) requesting court set aside/vacate order of June 16, 1997.

Appendix G
Exhibit C

FACTS

In the motion of the first matter, the Respondent was furnished a complete copy of the motion filed on June 20, 1997 on June 18, 1997. It has now been nineteen (19) plus days and no objection has been filed to granting COA.

In the motion of the second matter, the Respondent was furnished a complete copy of motion filed May 28, 1997 on May 24, 1997 and motion filed June 24, 1997 on June 20, 1997. It has now been forty (40) plus days since the first motion and seventeen (17) plus days since the second motion and no objection has been filed by Respondent.

SUMMARY

There it is reasonable to believe that the Respondent has no objections to either the issuance of COA and/or the release on bond of Movant in this matter.

ERRORS OF THE COURT

In the first motion matter was listed, cites quoted, etc. on pages 8 - 10 in the motion filed June 20, 1997.

In the second matter motion errors were listed on page 4 of motion file June24, 1997.

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Exhibit C

CONCLUSION

There appears to be no reason for the Court not to issued the COA and release movant on bond pending appeal. The Respondent and the Court has already acquiesced to enough violations in the Original Motion to grant release. (See Facts, page 3 & 4 with cites, etc. of motion filed June 24, 1997)

THEREFORE, the Movant prays the Court agrees and will:

1. Issue the Certificate of Appealibility for the United States Court of Appeals - fifth Circuit, and
2. Issue order to for immediate release of Movant as requested in motion filed May 28, 1997, page 5 & 6 with qualifications state on page 6 & 7.

RESPECTFULLY SUBMITTED this 8th day of July, 1997.

s/Charles R. Crowell
Charles R. Crowell, Pro Se
FMC 23829-077
3150 Horton Road - FTO
Fort Worth, Texas 76119-5996

CERTIFICATE OF SERVICE

I, Charles R. Crowell, do hereby certify that a copy of this motion, in it's entirety, was mailed to the U. S. Attorney,

Appendix G
Exhibit C

801 cherry Street, Suite 1700, Fort Worth, Texas 76102 via First Class Mail, postage prepaid, on this 8th day of July, 1997.

s/Charles R. Crowell
Charles R. Crowell

CERTIFICATE OF CONFERENCE

I, Charles R. Crowell, do hereby certify that a conference between myself and the U. S. Attorney has not taken place in this matter due to my incarceration as of this 8th July, 1997.

s/Charles R. Crowell
Charles R. Crowell

APPENDIX H

ORDER (COURT OF APPEALS) REFUSING TO OVERRULE DISTRICT COURT ON CERTIFICATE OF APPEALABILITY (COA)

Filed / Dated September 1, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10252
USDC No. 4:96-CV-625-E

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES CROWELL

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas

ORDER:

Charles R. Crowell, federal prisoner # 23829-077, requests this court to grant a certificate of appealability (COA) to appeal the denial of Crowell's motion under 28 U.S.C. §2255. Crowell alleged in his motion that 1) the evidence was not sufficient to support his convictions; 2) that his rights under the Double Jeopardy Clause and the Eighth Amendment

were violated by the imposition of civil penalties by the Internal Revenue Service; and 3) that the district court's conduct during pretrial and the trial proceedings deprived him of a fair trial.

Crowell has failed to make a substantial showing of the denial of a constitutional right in connection with these claims. Crowell' motion for COA is DENIED. See 28 U.S.C. § 2253(c)(1)(B).

Crowell's motion for release pending appeal is DENIED.

s/Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

APPENDIX I

APPELLANT'S MOTION FOR THE COURT (COURT OF APPEALS) TO SET ASIDE/VACATE JUDGMENT ORDER AND RECONSIDER MOTION(S)

Filed September 22, 1997

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA	§ File NO.97-10252
Appellee,	§ USDC 4:96-CV-625-E
versus	§ USDC 4:92-CR-139-E(01)
CHARLES RAYMOND CROWELL	§
	§
Appellant	§

APPELLANT'S MOTION FOR THE COURT TO SET ASIDE/VACATE JUDEMENT ORDER AND RECONSIDER MOTION(S)

TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

NOW COMES, Charles R. Crowell, Appellant in this matter requesting the Court set aside/vacate the judgment order filed September 11, 1997 and to reconsider the motion(s) filed July 25, 1997 and July 30, 1997 filed by Appellant. This motion is filed in accordance with FRCP Rule number 60 (b).

BE IT KNOWN TO ALL MEN that references to documents, case law, law, etc., whether stated, restated,

quoted or requoted that such references are included herewith and are a part hereof this motion.

HISTORY

This is the history of this case as of date:

03/12/97 -	Appellant filed Notice of Appeal and paid fee.
03/31/97 -	Appellant mailed two (2) copies of Appellant's Original Brief to Apellee.
04/04/97 -	Appellant filed the Original Brief with the Court.
05/12/97 -	U. S. court of Appeals - Fifth Circuit requests a Certificate of Appealability (COA) from District Court.
06/11/97 -	District Court filed Order denying COA.
07/19-23/97 -	Appellant filed Motion to the Court Overrule District on COA Ruling.
07/30/97 -	Appellant filed Motion to the Court to Overrule District Court on Motion to the Court for release of Appellant on Personal Recognize Bond pending ruling of Appeals Court.
08/08/97 -	Appellant filed "Certificate of Interested Parties".
09/11/97 -	Court filed order denying COA.

FACTS

The Court issued on Order as of September 11, 1997 denying COA and release. The Court stated that Appellant had

failed to make a substantial showing of the denial of constitutional rights in connection with these claims.

The Appellant substaintionally supported the violations with not only explanation of circumstances; but also, with case law for each violation of which there are seven (7) issues not three (3). This information was detailed in Exhibit "B" attached to the motion date July 25, 1997 (being a copy of "Movant's Motion to set aside/vacate on Order of denial of COA, filed June 20, 1997 with district court. These cites on issues stated a pp. 5 - 8 of Exhibit "B", page 4 and 5 of 60(b) to district court, page 4 & 5; of 60(b) motion to District Court; Original Motion under 60(b) to District Court, Pages 4 & 5; stated at Page 3 of Appellant's Original Petition before the Court at paragraph 3. In addition to this the courts ruling in the criminal case at direct appeals, (See U. S. vs Crowell, CA5, 60 F3rd 199) verified some of the claims of Appealant in the conduct of the trial, etc.; with fifty-six (56) case law, 26 laws and rules, 120 other documentation listed on pp. 31 & 32 of the Original Petition to this Court. All of the foregoing was a part of the motion(s) before this court by reference as stipulated in the preamble of the motion(s). Appellant qualified this Courts right to issue COA at Exhibit "B" pp 8-10, item 1 - 5. Summary of Exhibit "B" pp. 10 & 11 which state **"There are more than enough violations of constitutions rights to justify the issue of COA:**

1. **Three (3) violations of Fifth Amendment (one being immunity from punishment.**[3]

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[3] See footnote 1; Page 36a of Exhibit B attached to original motion in this matter dated 7/19-23/97

Appendix I

2. **Violations of 6th Amendment, affirmed in part by U.S Court of Appeals[4]**
3. **Violation of 8th Amendment.**
4. **Lack of jurisdiction[4] - volating rights of Movant**
5. **Invalid indictment[4] - violatin all rights of Movant"**

Appellant is filing this motion due to the fact, that Appellant believes the errors by this Court has occured at this point and due to the fact, that the information state in letter dated July 23, 1997 (Exhibit "G", attached) has not been received as of date from the Case Manager advising of alternative.

ERRORS OF THE COURT

Appellant believes the Court has erred in not taking into consideration (like the district court) right violations in Original §2255 motion, such as:

1. Fifth Amendment - immunity from punishment
2. Other Fifth Amendment, Sixth Amendment from the position of the Appellant in original §2255 motion
3. Lack of Jurisdiction (in original §2255 motion)
4. Invalid Indictment (in Orginal §2255 motion)

In not considering all violations and issues in this matter, as stated in Original §2255 motion, the court is denying

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[4] Ibid

Appendix I

Appellant **"due process under the law"** as well as rights in FRCP 4(a) and 4(c); Rule 22(b); Rule 3(a) USAR and Title 18 USCA §§ 3771 & 3772, and Title 28 USCA §§ 2072 - 2075. This alone qualifies for COA.

The Court has, also, erred in its statement in the Order dated September 11, 1997 with what the Appellant believes to be the most asinine statement, "Crowell has failed to make a substantial showing of the denial of constitutional right in connection with these claim.", he has ever heard. The items listed in the order have been will supported, such as:

Item 2) supported by 8 to 10 cites of case law on double jeopardy alone, initially undisputed opinions of this court; undisputed opinions of other circuit courts and U. S. Supreme Court

Item 3) This court has already confirmed district court's misconduct (See U. S. vs Crowell CA5, 60 F3rd 199). This court implied in its opinion other matters should or should have been contested but were not.

Item 1) Acquiesed[5] by Appellee and District Court, also undisputed, stated and cited in Original Petition before this Court, included as part of Motion dated July 25, 1997 by reference as per preamble of the motion.

The four issues not addressed by Appellee and District Court and was therefore acquiesed[5]. Such acquiesence still undisputed and

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[5] See Exhibit "B" of motion, page 36a, footnote1

uncontested, automatically grants certain relief to Appellant. [Example: 1) lack of jurisdiction, 2) invalide indictment, 3) immunity from punishment (5th Amendement violation), etc.] This relief has been denied by District Court and should be granted by this Court. This relief should consist of and be not less than:

1) reversal and vacation of convictions, and
2) immediate release of Appellant, and
3) dismissal with prejudice of case, etc., and
4) plus other benefits available to the Appellant

CONCLUSION

Appellant concludes that there is no reason for a COA not to be issued. Failure to do so contitutes the denying Appellant **"due process under the law".** Appellant prays that the Court agrees and will therefore issue COA and reconsider the motion for release pending appeal.

RESPECTFULLY SUBMITTED this 17th day of September, 1997.

s/Charles R. Crowell
Charles R. Crowell, Pro Se
Federal Medical Center
3150 Horton Road - FTO Unit
Fort Worth, Texas 76119-5996
Register No. 23829-077

Appendix I

CERTIFICATE OF SERVICE

I, Charles R. Crowell, do hereby certify that a copy of this motion, in its entirety, was mailed via first class mail, postage-prepaid to Delonia A. Watson, Ass't. U. S. Attorney, Chief of the Appellate Section, 1100 commerce Street, Third Floor, Dallas, Texas 75242-1699 on this 18th day of September, 1997.

s/Charles R. Crowell
Charles R. Crowell

CERTIFICATE OF CONFERENCE

I, Charles R. Crowell, do hereby certify that a conference between myself and the U. S. Attorney in regard to this matter has not taken place, due to my incarceration as of this 17th day of September, 1997.

s/Charles R. Crowell
Charles R. Crowell

APPENDIX I
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United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

CHARLES R. FULBRUGE III
CLERK

TEL. 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA 70130

July 23, 1997

Mr. Charles R. Crowell
#23829-077 FMC
3150 Horton Rd.
Fort Worth, TX 76119

No. 97-10252 - USA v. CROWELL

(DC #4:92-CR-139-E)

Dear Mr. Crowell:

Receipt is acknowledged of appellant's notice of non-compliance and motion/request of Court's stipulation of acquiescence.

Please be advised that in accordance with the rules, upon the filing of your brief on 4/4/97, your notice of appeal was treated as a request for a certificate of appealability. Upon receipt of the district court's order of 6/11/97, the above appeal was

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submitted to the Court for a disposition on your request for a certificate of appealability. Once a ruling is made you will be notified by mail as to how your appeal can move forward in this Court. If the request for COA is granted the appellee will then be instructed to file a responsive brief.

Accordingly, this is to advise that no action is being taken on the above motion as same is considered premature.

Very truly yours,

CHARLES R. FULBRUGE III, Clerk
s/ Robert F. Flaig
Robert F. Flaig
Case Manager

c. Ms. Delonia A. Watson

APPENDIX J

UNITED STATES COURT OF APPEALS DENIAL OF RECONSIDERATION OF MOTION(S)
Filed/Dated: October 10, 1997

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10252

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

CHARLES R CROWELL
Defendant - Appellant

Appeal from the United State District Court for the Northern district of Texas, Fort Worth

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Before KING, HIGGINBOTHAM, AND DAVIS, Circuit Judges.

BY THE COURT:

A member of this panel has previously denied the motion of appellant Charles Raymond Crowell for a certificate of appealability and the motion of appellant Charles Raymond Crowell for release pending appeal.

Appendix J

After consideration by this panel upon request of Charles Raymond Crowell IT IS ORDERED that appellant's motion for reconsideration is denied.

Initialed:
PSH
CDK
WED